252

CF0000062637

GA 3031/99

(2)

APPEAL PRISONER

No. 242/98 Name कवासी हड़मा

Father's Name बीजा Resident मी लीगोटी बोदेनार थाना - कोंडागांव

Age 32 वर्ष Sentenced to आजीवन कठोरावास on 23.1.99

Under Section 302 भा. द. वि. by श्री एच.एन. निगोलकर
विशेष न्यायाधीश जगदलपुर बस्तर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 2/99
3. Date on which appeal sent :- 2/99
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 242/98 Name कवासी हड़मा उर्फ बीजा

Continued in सब्सिडि Jail जगदलपुर

No. 1166 Dated 16-2-99

Forwarded to the CHIEF JUDICIAL MAGISTRATE

tegether with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

Superintendent Central / Distt / Sub-Jail.
केन्द्रीय जेल जगदलपुर

Date of receipt in C. J. M. Office. 19-2-99

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 51 dated 19.2.99

Forwarded to the मानकीय सत्र न्यायाधीश द्वारा कोर्ट

C. R. MAGISTRATE

Date of receipt in Applieate Court

(31)

DIVISION BENCH: HON. SHRI VIJAY KUMAR SHRIVASTAVA & HON. SHRI DHIRENDRA MISHRA,J J

Criminal Appeal No. 3031 of 1999

Appellant **Kawasi Hadma**

Vs

Respondent **State of M.P.**

Smt. Savita Tiwari, learned counsel for the appellant.

Shri Akhil Mishra, learned P.L. for the State.

ORAL JUDGMENT
(14/06/2006)

Per Dhirendra Mishra, J

The appellant has preferred this jail appeal through Superintendent, Central Jail, Jagdalpur as he has been convicted and sentenced vide judgment dated 23.01.99 passed by Presiding Officer, Special Court, Bastar at Jagdalpur in S.T. No. 188/98 for causing the death of his father namely Kawasi Bijja under Section 302 of the IPC and sentenced him to undergo imprisonment for life.

2. Case of the prosecution in brief is that accused/appellant is the son of deceased Kawasi Bijja and they resided separately. However, the lands were recorded jointly but they were cultivating their shares separately. The accused/appellant used to mortgage the land and spent the money so obtained on liquor. His father i.e. deceased Kawasi Bijja stopped him several times from mortgaging and because of this animosity on 06.08.97 when deceased Bijja was sleeping in the house accused/appellant Kawasi Hadma went and threatened him of killing and assaulted with axe over his head several times as a result of which Bijja died. The incident

(32)

was seen by the son of deceased Bijja namely Baman who resides with his father. First Information Report (Ex.P-1) of this incident was lodged by P.W.-1 Kawasi Mangdu, son of the deceased on 07.08.97 at about 15.10 hrs. on the basis of which offence under Sections 323/294/506-B of the IPC was registered. The deceased was initially taken to the Primary Health Centre, Bade Kilepal where P.W.-8 Dr. N.C. Laange examined Kawasi Bijja and submitted his report of Ex. P-9. Looking to the nature of injuries, he referred him to District (Maharani) Hospital, Jagdalpur for further treatment and also for the purpose of X-ray examination where he was examined by Dr. Govind Singh (P.W.-7) who noticed fracture of parietal bone. However the deceased succumbed to the injuries on 13.08.97. Merg intimation was given by Constable Santosh Kumar on 18.08.97. Inquest report of Ex. P-3 over the body was prepared on 14.08.97 in the presence of the witnesses. On the basis of memorandum of accused, the weapon of offence-axe was taken into possession under Ex. P- 4. Blood stained clothes were recovered from the appellant vide Ex. P-5. Blood stained soil and plain soil was taken into possession from the place of occurrence vide Ex. P-6. Blood stained bed sheet was recovered vide Ex. P-7. Body of the deceased was sent for autopsy on 14.08.97 to the District Hospital, Jagdalpur where Dr. Govind Singh conducted the post mortem and submitted his report vide Ex.P-11. The appellant was arrested on 19.08.97 vide arrest memo of Ex.P-12. After completion of the investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate Jagdalpur who in turn committed the case to Sessions Judge, Jagdalpur from where the learned Presiding Officer, Special Court Bastar at Jagdalpur received the case on transfer for trial. Charge under Sections 506 and 302 of the IPC was framed against the appellant who abjured his guilt.

(33)

3. The prosecution in order to establish the charge against the appellant examined as many as nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the appellant pleaded innocence and false implication. However the Court below after hearing the counsel for the parties acquitted the appellant of the charges under Section 506 of the IPC and convicted him under Section 302 of the IPC as mentioned above.

4. We have heard Smt. Savita Tiwari, counsel for the accused/appellant and Shri Akhil Mishra, learned P.L. on behalf of the State.

5. Homicidal death of deceased Bijja is not in dispute. Even otherwise taking into consideration the statement of P.W.-2 Baman and further considering the MLC report of Ex.P-8 and post mortem report of Ex.P-11 homicidal death of deceased Bijja is established.

6. P.W.-8 Dr. N.C.Laange, who examined the deceased on 07.08.97 has found following injuries over the person of the deceased :

i) Lacerated wound vertically placed in the occipital region in the size of 1"x ½ cm. x ½ cm.
ii) Lacerated wound in the right side of the parietal bone in the size of 1" x ½ cm. x ½ cm.
iii) Incised wound in front of the left ear in the size of 1" x ½ cm. x 2 cm
iv) Incised wound over right temporal region in the size of 1 ½ " x ½" x 2 ½ cm. and contusion over left eyeball region.

As per X-ray report of Ex.P-8 and P-8 A there was a fracture of the right parietal bone. As per postmortem report of Ex. P-11 the doctor

(34)

noticed depressed bone fracture on the right frontal bone and depressed bone fracture on the left frontal bone. The membrane of the head was ruptured and the cause of death according to the post mortem report is given as brain hemorrhage due to injuries over head. The same was homicidal in nature and injuries caused on the person of the deceased were sufficient for death.

7. Learned counsel for the appellant submits that from perusal of the injuries described by P.W.-7 Dr. Govind Singh it is evident that no incised wound was caused to the deceased and all the injuries were lacerated wounds. Since it is alleged that the appellant assaulted the deceased by a sharp edged weapon – axe and who died almost after eight days of the incident and no injuries were found on the person of the deceased, the intention of the appellant in causing the death of his own father can not be inferred and therefore the offence does not travel beyond Section 304-II of the IPC.

8. On the other hand learned counsel for the State supports the judgment of the trial Court.

9. We have heard learned counsel for the parties. We have perused the charge sheet as also the documentary and oral evidence available on record. The conviction of the appellant is based on the statement of P.W.-2 Baman who is the eye witness to the incident and who is the son of the deceased and real brother of the appellant. Report of the incident was lodged by P.W.-1 Kawasi Mangdu who is also the elder brother of the appellant and in the First Information Report the appellant has been named as a perpetrator of the offence and the circumstances under which the offence is alleged to have committed. P.W.-2 Baman has stated in his deposition that his father Kawasi Bijja (since deceased) resided with him.

(35)

Accused/appellant Kawasi Hadma assaulted his father with axe and which was seen by him. Apprehending that accused/appellant might assault him also he had fled towards the forest. His father was taken to the hospital and eight days after the incident his father died. He narrated the incident to his sister in law Sanni.

10. P.W.-1 Kawasi Mangdu (Complainant) has also stated that his father resided with his younger brother at the time of the incident. The accused/appellant used to sell the land without informing others and spent the money on liquor, on this account his father used to reprimand him. On the date of incident he took his father to the hospital who died after five days. His brother Baman told him that the accused/appellant assaulted his father by axe.

11. P.W.-3 Kawasi Sanni has also stated that on the dated of incident her brother in law namely Baman came to her house in a frightened condition and informed that accused/appellant Kawasi Hadma has assaulted his father by axe and killed him. Thereafter she went to the place of incident and saw the injuries over Bijja. However Bijja was alive at that time.

12. The defence in the cross examination of these three witnesses has not been able to elicit any circumstance which makes the evidence of these witnesses untrustworthy or unreliable. The statement of these witnesses is duly corroborated by the MLC report of Ex.P-8 in which the corresponding injuries have been found on the person of the deceased. In the post mortem report also the injuries as alleged by the eye witnesses have been found. The statements of these witnesses are further corroborated by the promptly lodged First Information Report wherein the name of the appellant is mentioned.

13. So far as the argument of the counsel for the appellant that looking to the nature of the injuries present on the body of the deceased the offence does not travel beyond Section 304-II of the IPC, is concerned, from perusal of the MLC report of Ex.P-8 and also the post mortem report of Ex. P-11 we find that several assaults were inflicted by the appellant over the deceased resulting in multiple fracture of the parietal bone and thus taking into consideration the weapon of offence, the part of the body over which the injuries have been inflicted, the arguments of the counsel for the appellant cannot be accepted that the appellant did not cause injuries with an intention to cause death of his father. Thus, on the basis of the aforesaid discussion we are of the opinion that the prosecution has established the charges against the accused/appellant by leading positive evidence beyond reasonable doubt and the Court below has not committed any illegality in holding the accused/appellant guilty in convicting and sentencing him by the impugned judgment.

14. In the result, the appeal being devoid of merits is liable to be dismissed and it is accordingly dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
Dhirendra Mishra
Judge